IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

NATHAN H.,
Appellant,

v.

ARLIS G., MARIO G., AND E.H.,
Appellee.

No. 2 CA-JV 2013-0066
Filed January 8, 2014

Appeal from the Superior Court in Pinal County
No. S1100SV201200093
The Honorable Brenda E. Oldham, Judge

AFFIRMED

COUNSEL

Heard Law Firm, Mesa
By James L. Heard
Counsel for Appellant

Benes Law & Mediation, Chandler
By Julie A. Benes
Counsel for Appellees

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

M I L L E R, Judge:

¶1 Appellant Nathan H. appeals from the juvenile court's June 2013 order terminating his parental rights to his daughter, E.H. We affirm the court's ruling for the following reasons.

Relevant Facts

¶2 When Nathan and Arlis G. were divorced in March 2004, Nathan was granted sole custody of their daughter E.H., who was then two-and-a-half years old. In June 2005, Nathan left E.H. in Utah in the care of his aunt. He brought E.H. back to Arizona nearly five months later and, shortly thereafter, he agreed to leave E.H. and all of her belongings with Arlis and did not contest her petition for joint custody. In 2007, Arlis married Mario G., who has since resided with the family, providing financial support and acting as the "standing father figure" in E.H.'s life.

¶3 Nathan regularly participated in parenting time with E.H. every other weekend and a few hours during the week from December 2005 until August 2009, when he relocated to Kansas. In November 2009, he was arrested for possession of child pornography,[1] and Arlis successfully moved to modify custody, with the family court ordering that all Nathan's visits with E.H. be supervised until Nathan completed a psychosexual evaluation.[2]

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[1]Nathan was acquitted of the charges in 2011.

[2]Subsequently, in August 2011, the parties agreed and the court ordered that Arlis have sole custody of E.H. and discretion, "which may include consideration of any psychosexual evaluation

¶4 Nathan did not regularly pay child support for E.H., and Arlis generally received support payments only sporadically, when funds were withheld from Nathan's wages or tax refunds, although Nathan testified that he made one voluntary $100 child support payment in 2010, and one voluntary $200 payment in 2011. In November 2011, Arlis told Nathan that Mario wished to adopt E.H.

¶5 In January 2012, Nathan remarried. That April, his infant stepson suffered a forced airway obstruction after being in Nathan's care. After first suggesting the infant's six-year-old brother might have caused the injury, Nathan pleaded guilty to reckless aggravated battery and interference with law enforcement. Arlis and Mario filed a petition to terminate Nathan's parental rights in November 2012.

¶6 By the time of the termination hearing in March 2013, Nathan still had not completed the court-ordered psychosexual evaluation required to have unsupervised contact with E.H. Nathan testified that he had travelled to Arizona to visit E.H. twice in 2010 and once in 2011 and had telephoned her, on average, two times each month, and had been calling three to four times a week since the termination petition had been filed. But Mario testified Nathan's telephone contact with E.H. before the petition was filed had "seemed very inconsistent," as "[s]ometimes it seemed like every other week, sometimes it seemed like every other month." There was also evidence that E.H., now twelve, sometimes refused Nathan's calls, telling Arlis that she did not wish to speak with him. Nathan expressed his intention to move back to Arizona after his probation is completed in 2014, but he acknowledged that he had not had "significant contact" with E.H. since he left the state in August 2009 and that, since then, Arlis and Mario have provided for her "day-to-day necessities."

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that [Nathan] may provide her in the future," to set terms and conditions governing Nathan's reasonable parenting time and telephone contact with E.H.

¶7 In an under-advisement ruling issued after a three-day termination adjudication hearing, the juvenile court terminated Nathan's parental rights to E.H. on the grounds that he had abandoned her and had "been convicted in the State of Kansas [for] what would be child abuse in Arizona." *See* A.R.S. § 8-533(B)(1) and (2). The court also found termination would be in E.H.'s best interests by providing her with the stability promised by adoption. The court noted E.H.'s "longtime relationship" with Mario, who has been providing for her financial support, and Nathan's acknowledgment that Mario "takes good care" of her.

Discussion

¶8 On appeal, Nathan argues there was insufficient evidence to support the juvenile court's findings of grounds for termination or its finding that termination was in E.H.'s best interests. To terminate parental rights, the court must find the existence of at least one of the enumerated statutory grounds for termination and "shall also consider the best interests of the child." § 8-533(B). Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 16, 41, 110 P.3d 1013, 1017, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 6, 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court's order, *id.* ¶ 10, and if sufficient evidence supports any one of the statutory grounds relied upon, "we need not address claims pertaining to the other grounds," *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶9 Termination of parental rights may be warranted by a finding "[t]hat the parent has abandoned the child." § 8-533(B)(1). Section 8-531(1), A.R.S., provides:

> "Abandonment" means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

In determining whether this standard has been met, "a court should consider each of the stated factors—whether a parent has provided 'reasonable support,' 'maintain[ed] regular contact with the child' and provided 'normal supervision,'" and the court's determination "will depend on the circumstances of the particular case." *Kenneth B. v. Tina B.*, 226 Ariz. 33, ¶¶ 18, 19, 243 P.3d 636, 640 (App. 2010), *quoting* § 8-531(1) (alteration in *Kenneth B.*).

¶10 Nathan argues he "did his best to maintain a relationship" with E.H. after moving to Kansas and asserts there was no "showing by clear and convincing evidence that he did not make at least a *minimal* attempt to maintain contact" with her. But to avoid a finding of abandonment, a parent must "make more than minimal efforts to support and communicate with his child," *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 21, 995 P.2d 682, 686 (2000), and must do more than "maintain contact." *See Kenneth B.*, 226 Ariz. 33, ¶¶ 17-18, 243 P.3d at 639-40. The statute also requires consideration of whether a parent "provided 'normal supervision,'" *id.* ¶ 18, *quoting* § 8-531(1), and Nathan's failure to submit to a psychosexual evaluation, ordered almost three years before the termination hearing, clearly prevented him from doing so.

¶11 Relying on *Michael J. v. Ariz. Dep't. of Econ. Sec.*, 194 Ariz. 231, 979 P.2d 1024 (App. 1999), Nathan also contends a finding of abandonment may not be sustained absent "conduct on the part of the parent which implies a conscious disregard of the obligations

owed by a parent to the child, leading to the destruction of the parent-child relationship." But our supreme court vacated the appeals court's decision in *Michael J.*, and, in doing so, expressly rejected the common law "settled purpose doctrine" and "conscious disregard test," which focused in great part on a parent's subjective intent, in favor of the amended statutory definition of abandonment set forth above.[3] *Michael J.*, 196 Ariz. 246, ¶¶ 15-18, 995 P.2d at 685-86; *see also Kenneth B.*, 226 Ariz. 33, ¶¶ 15-16, 243 P.3d at 639 (recognizing change in law). Thus, the juvenile court was not required to consider whether Nathan had intentionally relinquished his rights to E.H. or consciously disregarded his parental obligations. *See Michael J.*, 196 Ariz. 246, ¶ 18, 995 P.2d at 685-86.

¶12 The absence of regular contact and reasonable support, exacerbated by his failure to obtain a psychosexual evaluation that might have led to more normal visitation and child supervision, constitutes reasonable evidence supporting the court's determination that Nathan abandoned E.H. *See* § 8-531(1); *Kenneth B.*, 226 Ariz. 33, ¶ 19, 243 P.3d at 640. In light of this conclusion, we need not consider the juvenile court's finding, as an alternative ground for termination, that Nathan had "wilfully abused a child," under § 8-533(B)(2). *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205.

¶13 Similarly, the juvenile court's ruling that termination was in E.H.'s best interests was supported by reasonable evidence, and we will not disturb it. *See id.* ¶ 12 (appellate court does not reweigh evidence on review). To establish that termination is in a child's best interests, a petitioner must prove that the child either would benefit from the severance or be harmed if the parental relationship continues. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). Mario's longstanding participation in parenting E.H., and his interest in providing her with permanent stability by adopting her, is sufficient to support the court's best interests finding. *See id.* ¶¶ 19-20 (evidence of adoptive

[3]"Vacated cases have no precedential value." *Wertheim v. Pima Cnty.*, 211 Ariz. 422, n.2, 122 P.3d 1, 5 n.2 (App. 2005).

plan by current placement meeting child's needs sufficient to find termination in child's best interest).

¶14 Moreover, the presence of a statutory ground for termination typically will "have a negative effect" on a child and may support a juvenile court's best-interests finding. *In re Maricopa Cnty. Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988). At the termination hearing, Nathan acknowledged that his relocation to Kansas and his inconsistent communications have "been hard for [E.H.]" and have "affected her negatively," and that she "deserves having a regular, stable, steady, involved father in her life." The court's finding that E.H. would benefit from such stability, which Mario was willing to provide through adoption, was clearly supported by the evidence.

Disposition

¶15 For the foregoing reasons, we affirm the juvenile court's ruling terminating Nathan's parental rights to E.H.